

tioned in the prayer of the petition, and decern: Find the defenders liable in expenses in this and in the Inferior Court," &c.

Counsel for the Pursuer—A. S. D. Thomson. Agent—John Veitch, Solicitor.

Counsel for the Defender—W. C. Smith—M'Lennan. Agent—P. H. Cameron, S.S.C.

Thursday, March 17.

SECOND DIVISION.

GORE BOOTH v. GORE BOOTH'S TRUSTEES.

Succession — Testament — Revocation — Residuary Bequest.

By trust-disposition and settlement dated in 1877 a testatrix directed her trustees to divide the residue of her estate in certain proportions among her sons *nominatim*. After her death there was found in her repositories a holograph writing beginning, "My will is in the keeping of" certain law-agents. The writing then proceeded—"In addition to this I hereby leave and bequeath" certain sums to various people. "Of my ornaments I leave,"—here followed gifts of articles of personal use to various relatives and friends. "To my dear daughter Joana, my dressing-box and all my trinkets not mentioned above. Whom also I make my residuary legatee, to whom shall belong all my clothes, moveables, or personal property not otherwise disposed of, as well as furnishing and plishing of my house, 88 Clyde St., Helensburgh. To Robert, part of silver plate, of which there is a separate list; also part of linen and backgammon box. Signed, ISABELLA GORE BOOTH, January 7, 1884."

Held that the bequest to Joana in the holograph writing did not operate as a revocation of the residuary bequest in the trust-disposition and settlement, but was confined to corporeal moveables *ejusdem generis* with those articles of personal use with which the words, both before and after those quoted, dealt.

Mrs Isabella Smith Gore Booth died on 23rd June 1897, leaving a trust-disposition and settlement dated 6th November 1877, by the last purpose of which she directed her trustees "to realise the whole residue and remainder of my said means and estate particularly and generally above conveyed, including the mansion-house and grounds of Artarman aforesaid, and to divide the same into six equal parts or shares, and to pay and convey to my son, the said Robert Henry, two of said parts or shares, and to my other sons, James, Edmund Henry, Henry Francis, and Reginald, each one of said parts or shares; declaring that in the event of any of my said sons predeceasing

me leaving issue, such issue shall be entitled equally among them to the share which their father would have taken on survivorship; and further, that in the event of any of them predeceasing me without leaving issue, or of their leaving issue, but of such issue all dying before receiving payment of their father's share, then the share which such predeceaser or predeceasers would have taken on survivorship shall fall and accrete to his surviving brothers and the issue of any of them who may have predeceased, equally, as coming in place of their father."

After Mrs Gore Booth's death there was found in her house at Helensburgh a small travelling strong-box containing an envelope marked in her handwriting "Private Will 1881." It contained, *inter alia*, a holograph writing beginning—"My will is in the keeping of Messrs Ritchie & M'Lean, Hope St., Glasgow," a firm of law-agents; "Trustees"—here followed their names—"In addition to this I leave and bequeath"—here followed legacies of various sums to her sons and others and to her trustees. The writing then went on—"Of my ornaments I leave to my son Robert, for his wife when he marries, my set of pearls"—here followed legacies of other articles of personal adornment to nine other relatives and friends—"To my dear daughter Joana, my dressing-box and all my trinkets not mentioned above. Whom also I make my residuary legatee, to whom shall belong all my clothes, moveables, or personal property not otherwise disposed of, as well as furnishing and plishing of my house, 88 Clyde St., Helensburgh. To Robert, part of silver plate, of which there is a separate list; also part of linen and backgammon box. Signed, ISABELLA GORE BOOTH, January 7, 1884."

A question having arisen, *inter alia*, as to whether the residuary clause in the settlement had been revoked by the holograph writing, a special case was presented by, *inter alios*, (2) Miss Joana Arabella Gore Booth, (7) Mrs Gore Booth's trustees, and (8) James Gore Booth, Robert Henry Gore Booth, Edmund Henry Gore Booth, Reginald Henry Newcomen Gore Booth, and (10) the Reverend Henry Francis Gore Booth, the residuary legatees under the trust-disposition.

The questions at law included the following—(4) Is the effect of the holograph writings, or any of them, which were found in the repositories of Mrs Gore Booth, to revoke the residue clause in the trust-disposition and settlement executed by her?

Argued for second party—The holograph writing had revoked the residuary bequest in the trust-disposition. The words used in the holograph writing were capable of including the whole personal property of the deceased, and were a valid bequest of residue. The mention of clothes did not derogate from the universality of the bequest, and the interpretation was strengthened by the words "moveables or personal property"—*Dobson v. Bowness*, 1868, L.R., 5 Eq. 404; *Wallace's Executors v. Wallace*, November 21, 1895, 23 R. 142.

Argued for eighth and tenth parties—The holograph writing was “in addition to the trust-disposition,” and contained no revocation of any part of the latter. The bequest to Joana must be held to have a restricted meaning, and must be read as a bequest of the rest of the moveables *ejusdem generis* with those specified in the preceding clauses of the writing—*Douglas's Executors*, February 5, 1879, 7 Macph. 504.

At advising—

LORD JUSTICE-CLERK—The holograph writing which Mrs Gore Booth left in addition to her settlement must be read along with it, for there is express reference to her will, and a statement of the custody in which it lies, and what is done by the holograph writing is declared to be “in addition to this.” The clause in which in the holograph writing she speaks of making Joana her residuary legatee, when read in connection with the words which are associated with it, are not in my view words of residuary bequest in a strict sense, but must be read as referred to the special subject she was dealing with, viz., “clothes, moveables, and personal property not otherwise disposed of.” It is, I think, of the residue of such things and not of her general estate she is writing.

LORD TRAYNER—The fourth question is the only one which I have felt attended with any difficulty. If there had been no clause disposing of residue in Mrs Gore Booth's settlement executed on 6th November 1877, it would have been difficult to maintain that the words used in the codicil (or testamentary writing) dated 7th January 1884 did not sufficiently constitute a bequest of the whole residue of Mrs Gore Booth's moveable property in favour of her daughter Joana. If these words were regarded as sufficient to carry the residue to Joana, then they would operate (so far as regards moveable property) as a revocation of the first residuary bequest. But on consideration I am satisfied that the clause in the writing of January 1884 was not intended to operate, and did not operate, as a revocation of the residuary bequest contained in the prior settlement. In the first place, the opening words of the codicil indicate that its purpose was, not to alter the prior settlement, but merely to add to it. Secondly, the codicil is chiefly occupied with the enumeration of gifts or legacies of articles of personal adornment or for personal use. In the course of this enumeration there occurs the legacy “to my dear daughter Joana, my dressing-box and all my trinkets not mentioned above,” and then follow the words “whom also I make my residuary legatee, to whom shall belong all my clothes, moveables, or personal property not otherwise disposed of, as well as furnishing and plenishing of my house 88 Clyde Street, Helensburgh.” Now, it is obvious that if this had been intended to make Joana residuary legatee of the moveable estate not otherwise disposed of, it was unnecessary to leave her specially the dressing-box “and all my trinkets not men-

tioned above,” or the furniture and plenishing of the house in Helensburgh. These would have fallen within the residue without special mention, not having been otherwise disposed of. But if this provision was intended to bequeath to Joana all the trinkets not specially disposed of, all the clothes, moveables, or personal property (personal property, that is, not in the technical sense of personalty, but property for personal use or ornament) not otherwise disposed of, and also the plenishing of the house in Helensburgh, then this clause was necessary to carry out the testator's intention, for without it, all that she was thus giving and wished to give as residue to Joana would have been included in the prior residuary bequest to her five sons. Thirdly, the clause in the codicil could not in any view have revoked the prior residuary bequest entirely, seeing that it only referred to moveables, whereas the prior residuary bequest included heritage as well as moveables. I think, therefore, that the fourth question must be answered in the negative.

LORD YOUNG—I concur.

The LORD JUSTICE-CLERK read the following opinion of LORD MONCREIFF, who was absent:—On the questions argued to us I am of opinion as follows: . . . 3. The holograph writings of Mrs Gore Booth do not revoke the residue clause in her settlement. The writing on pp. 42, 43, is expressly stated to be “in addition to” the will previously executed; and the collocation in which the words “whom also I make my residuary legatee” occur, confine the bequest to corporeal moveables *ejusdem generis* with those personal moveables which are expressly bequeathed to Joana herself and others both before and after the words quoted. Indeed, the expression is interpreted by the words which immediately follow “to whom” (that is, Joana as residuary legatee) “shall belong my clothes, moveables, or personal property not otherwise disposed of.”

The Court answered the fourth question in the negative.

Counsel for Second and Seventh Parties—Sym. Agents—Reid & Guild, W.S.

Counsel for Eighth Parties—Macfarlane.
Counsel for Tenth Party—Pitman. Agents—J. & F. Anderson, W.S.